

Michigan Women

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Ballot Proposal 2 and the California Experience

Ballot Proposal 2 is a proposed amendment to the state constitution, certified to be on the ballot November 7, 2006.

Proposal 2 states:

A proposal to amend the state constitution to ban affirmative action programs that give preferential treatment to groups or individuals based on their race, gender, color, ethnicity or national origin for public employment, education or contracting purposes.

The proposed constitutional amendment would:

- **Ban public institutions from using affirmative action programs that give preferential treatment to groups or individuals based on their race, gender, color, ethnicity or national origin for public employment, education or contracting**

purposes. Public institutions affected by the proposal include state government, local governments, public colleges and universities, community colleges and school districts.

- **Prohibit public institutions from discriminating against groups or individuals due to their gender, ethnicity, race, color or national origin. (A separate provision for the state constitution already prohibits discrimination on the basis of race, color or national origin.)**

- **Should this proposal be adopted?**

Yes

No

Current civil rights laws protect against discrimination. Title VI of the federal Civil Rights Act of 1964 protects against discrimination on the basis of race, color or
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Michigan Civil Rights Initiative

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national origin in any program receiving federal funding. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin. Title IX of the Education Amendments of 1972 prohibits sex discrimination in any educational program receiving federal funding. Executive Order 11246 forbids discrimination by federal contractors and subcontractors and requires them to take affirmative action for certain classes of workers. In Michigan, the Equal Protection Clause of the Michigan State Constitution is the same as the federal Equal Protection Clause, and guarantees the equal protection of the law. In addition, the Elliott-Larsen Civil Rights Act, passed in 1976, protects against discrimination in employment, education, public services and public accommodations on the basis of race, sex, color, national origin, age, height, weight, religion, familial status or marital status.

Affirmative action programs are a set of actions designed to eliminate existing and continuing discrimination to remedy lingering effects from past discrimination, and to create systems and procedures to prevent future discrimination. Five major legal cases have decided the parameters of affirmative action programs, such as not allowing quotas, and requiring evidence of past discrimination, as well as

the compelling government interest for certain programs.

In California, Proposition 209, a nearly identical constitutional amendment, was adopted in 1996. According to "The Gender Impact of the Proposed Michigan Civil Rights Initiative," conducted by Susan W. Kaufmann, Associate Director of the Center for the Education of Women, and Anne K. Davis, Graduate Research Assistant, the Center for the Education of Women at the University of Michigan, programs providing access and exposure to education, employment and business opportunity for women and minorities have been eliminated or amended in California as a result of Proposition 209.

Affected programs included:

- Elementary and high school level reading, science and math programs for female and minority students
- Summer and after-school programs targeted to either girls or boys, or to children in particular racial, national or ethnic groups.
- Outreach and funding for women and minority math, science and technology teachers.
- Programs helping women and minorities become apprentices in the skilled trades.
- Higher education funding for minority health professionals.

- Scholarships, fellowships and grants at all levels of education that take into consideration gender, race, ethnicity or national origin.
- Affirmative action in public contracting, including not only those efforts with explicit goals but also outreach programs and notification of bidding opportunities for women- and minority-owned businesses.
- Affirmative action programs in civil service and community college hiring and in government contracting were ended.

The same study notes that the National Coalition of Free Men, Los Angeles (CFM) or its members filed suit to challenge, among others, breast cancer screening and battered women's shelters programs. In *Blumhorst v. Jewish Family Services of Los Angeles*, an individual CFM member sued battered women's shelters for violating equal protection by allegedly providing services to women, but not men, and sought the elimination of state funding. Funding for battered women's shelters was preserved when the courts found that *Blumhorst* lacked standing because, although he claimed to be a survivor of domestic violence, he was not in need of services when he called shelters

seeking to be admitted, and therefore had not suffered any injury when he was allegedly denied services.

Subsequently, in *Coalition of Free Men v. State of California*, the Coalition and one of its members challenged all programs providing services or funding for women in California. They based their claim for standing to sue in the *Connerly v. State Personnel Board* decision that had addressed the use of gender- or race- based classifications, and filed their suit as both a taxpayer action and a citizen action to prevent an illegal expenditure of public funds. The California Court of Appeals found that CFM and its members did not have standing to sue.

According to the study "Evidence from California suggests the Prop 209 has eroded access to services, education, job training, and other opportunities for women. There is ample evidence to support expectations that passage of the MCRI in Michigan would result in a similar pattern of lost services and restricted opportunities. Redevelopment of the Michigan economy from a manufacturing to a knowledge basis will require a highly qualified and technologically educated workforce, in which women's talents and skills will be indispensable. Full access to opportunity strengthens not only women, but also their families, communities and the state."

For more information you can read the complete report at <http://www.umich.edu/~cew/>.



A Ruling in Favor of Contraceptive Equity

On August 21, 2006, the Michigan Civil Rights Commission (MCRC) issued a Declaratory Ruling stating that Michigan employers violate the Elliott-Larsen Civil Rights Act (ELCRA) if the employer excludes contraceptive coverage and related services in an employer-provided comprehensive health plan that provides prescription drug coverage. The MCRC's ruling follows a December 2000 Equal Employment Opportunity Commission (EEOC) ruling that adopted the same position for employers covered under Title VII of the Civil Rights Act. On January 6, 2006, the following groups asked MCRC to issue a declaratory ruling on the issue of contraceptive equity: American Association of University Women of Michigan, American Association of University Women-Grand Rapids Branch, American Civil Liberties Union of Michigan, Grand Rapids Institute for Information Democracy, Greater Kalamazoo Chapter of the National Organization for Women, MARAL Pro-Choice Michigan, Metro-Detroit Chapter of the Coalition of Labor Union Women, MI List, Michigan Chapter of the National Association of Social Workers, Michigan Council for Maternal and Child Health, Michigan Conference of the National Organization for Women, Michigan Section of the American College of Obstetricians and Gynecologists, Michigan Women's Commission, National Council of Jewish Women/Greater Detroit Section, National Family Planning & Reproductive Health Association, National Women's Law Center, Planned Parenthood Advocates of Michigan, Planned Parenthood Centers of West Michigan, Planned Parenthood of East Central Michigan, Planned Parenthood Mid-Michigan Alliance, Planned Parenthood Northern Michigan, Planned Parenthood of South Central Michigan, Progressive Women's Alliance of West Michigan, Women's Resource Center (based in Grand Rapids) and the YWCA of Kalamazoo.

Background

Health care professionals consider contraception to be an important component of health care for women and a critical contributor to improving maternal and child health. According to the American College of Obstetricians and Gynecologists, contraception is a medical necessity during 30 years of a woman's lifespan. All FDA-approved prescription contraception is available for use only by women. Thus, where a health benefits plan excludes such coverage, women must either pay the out-of-pocket expenses of purchasing prescription contraception, which can be expensive (hundreds of dollars a year, depending on the form of contraception), or bear all of the health risks associated with unplanned pregnancy, which can be significant. According to the Michigan Department of Community Health, 40.5% of all pregnancies are unintended.

At the same time, the premium cost to an employer of adding such coverage is, at most, minimal. Moreover,

studies demonstrate that employers save money through insurance coverage of contraception by eliminating the costs associated with unplanned pregnancies. It costs an employer approximately \$1.43 per employee per month to add full contraception benefits to a health plan compared to the average mother and infant cost for one pregnancy is \$10,000. (www.covermypills.com) The National Business Group on Health ("NBGH"), an organization representing 160 large national and multinational employers, has estimated that failing to provide contraceptive coverage could cost an employer 15-17% more than providing it. According to NBGH, this is because any premium cost associated with including contraception in employees' insurance coverage is more than offset by avoiding the direct and indirect costs related to childbirth (including costs associated with employee absences, maternity leave, employee replacement, and reduced employee productivity), which can be among the highest cost drivers of an employer's health care expenditures. In fact, when the federal government added prescription contraceptives to the Federal Employee Health Benefits Program (FEHBP), it found that this caused no increase in the government's premium cost.

Impact on Michigan Employers

As defined by ELCRA, an employer is a person with at least one other employee. This is important because the EEOC's ruling only covers employers with 15 or more employees. Until now, smaller businesses were not on notice that they were violating Title VII. However, the MCRC's ruling applies only to employers with an already existing comprehensive health plan. A comprehensive health plan is a plan that provides prescription coverage, medical treatment, and services to treat and prevent a variety of conditions. If an employer health plan does not provide this type of coverage, then the employer does not have to include prescription contraceptive coverage.

Certain employers could seek a religious exemption if providing contraceptive coverage would violate religious beliefs. The employer would have to employ and serve mainly people who share the employer's beliefs. Larger institutions, like hospitals and charitable organizations, would not be exempt.

Scope of the Ruling

The ruling is not law. It puts Michigan employers on notice that exclusion of prescription contraception is an unlawful employment practice. It unfairly discriminates against women because only women are affected by pregnancy and related medical conditions. Michigan courts, as federal courts have with the EEOC ruling, can use the MCRC's ruling as persuasive authority in holding an employer liable for excluding contraceptive

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Cervical Cancer Vaccine Legislation

On June 8, 2006, the federal Food and Drug Administration (FDA) announced the approval of Gardasil, the first vaccine developed to prevent cervical cancer, precancerous genital lesions and genital warts due to human papillomavirus (HPV) types 6, 11, 16 and 18. The vaccine is approved for use in females 9-16 years of age. The vaccine is given in three injections over six months and will cost \$360. The Center for Disease Control's Advisory Committee on Immunization Practices voted unanimously to recommend that all girls ages 11 and 12 receive the vaccine.

Senate Bills 1416 and 1417 require either a vaccine for the human papillomavirus (HPV) or a statement that the parent or guardians have opted out for all girls entering the sixth grade in Michigan's schools and academies beginning with the 2008. The vaccine prevents the virus that causes cervical cancer. Both bills passed the Senate on September 20. The legislation was introduced by Senators Beverly Hammerstrom, Nancy Cassis, Laura Toy, Bruce Patterson, Patricia Birkholz, Shirley Johnson, Deb Cherry, Gretchen Whitmer, Martha Scott, Irma Clark-Coleman, Gilda Jacobs, Liz Brater, Tom George and Tony Stamas. The bills are now awaiting action in the Michigan House of Representatives.

The vaccine has been shown in clinical trials to be 100% effective at preventing disease from the two types of HPV that are responsible for approximately 70% of all cervical cancers. Cervical cancer is the second most diagnosed cancer among women, behind breast cancer.

Worldwide, cervical cancer is the second leading cancer-killer of women, with almost a quarter-million deaths each year. In the United States, the American Cancer Society estimates 9,710 women will be diagnosed with and more than 3,700 women will die of cervical cancer in 2006. According to the U.S. Centers for Disease Control and Prevention, approximately 20 million

people are currently infected with HPV, with 6.2 million new infections occurring annually and approximately 80% of sexually active women will be infected with HPV by age 50. For 90% of infected women, the virus is naturally cleared by the body and becomes undetectable within two years. However, persistent infection with "high-risk" types of HPV can cause cell changes that, untreated, can lead to cervical cancer.

The concept of the legislation is supported by the Governor, the Michigan Women's Commission and numerous other organizations.

Maryann Mahaffey Remembered

We would like to remember Maryann Mahaffey, who died July 27, 2006. She was a Detroit City Council member for thirty-one years, Council president from 1990-1998 and 2002-2005, and a professor of social work at Wayne State University from 1965 to 1990.

Her many accomplishments included landmarks in Michigan women's history. In 1970, when she ran for county commissioner in 1970, her opponent challenged the legality of Mahaffey using her maiden name on the ballot. Mahaffey sued, and won the lawsuit, taking her fight up to the Michigan Supreme Court. She helped establish Detroit's first rape crisis center. When the Detroit Athletic Club only permitted women to enter through the side door, as guests, she walked right in through the front door. She said once that her mission was "to end discrimination on the basis of race, ethnicity, etc., to begin to make a dent in poverty, and to also end discrimination against women." She continued that fight throughout her life.

Governor Jennifer M. Granholm said of her, "Maryann was a voice for those who could not be heard, and she gave hope when none was on the horizon. She was one of the most admired and beloved public servants anywhere, and for me, she was a mentor, a role model and a friend."

We hope to honor Maryann Mahaffey by continuing the fight to end discrimination against women and by serving as mentors and role models for the women who follow us.

Contraceptive Equity

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coverage. As with the federal ruling, an employee who works for a company that provides health insurance with prescription drug coverage and excludes contraception would have to file a complaint with the Michigan Department of Civil Rights. Each complaint will be investigated by the department in accordance with their normal practice. The ruling is available at www.michigan.gov/mdcr.

The Michigan Legislature could pass legislation to make the principles behind the MCRC's ruling the law. Two bills, SB 431 and SB 432, introduced by Senators Martha G. Scott and Beverly S. Hammerstrom and HB 5175 introduced by Representative Bieda, have not moved in the Michigan Legislature.

21st Century Job Fund

Karla Campbell, MI Economic Development Corporation

The Michigan 21st Century Jobs Fund is a program designed to take Michigan into the next century by looking at new technologies and industries, yet not abandoning the automotive industry where we have gained so much in the way of technology, alternative energy and advanced manufacturing. This jobs fund is unique and, as you can imagine, requires a great deal of oversight. The Strategic Economic Investment and Commercialization Board has the ultimate responsibility for the Fund and is a 19-member board appointed by the Governor. The MEDC provides staff support. The SEIC Board seeks to foster the growth of Michigan's high-tech economy by investing in the best research and commercialization opportunities in four competitive edge technologies: advanced manufacturing, alternative energy, life sciences and homeland security/defense.

The 21st Century Jobs Fund Award Competition is just part of the entire program to help Michigan businesses. On September 6, 2006, 61 various projects were awarded funds out of 179 proposals that made it to the final round of the competition; more than \$100 million was awarded. Out of the 61 awardees 11 project directors are women and leaders in their technological fields. The proposals were reviewed by the American Association for the Advancement of Sciences. Below is a breakout of the various sectors:

The other program resources included in the 21st Century Jobs Fund are:

Life sciences:	25 proposals - \$45.7 million
Alternative energy:	4 proposals - \$8.9 million
Advanced automotive materials and manufacturing:	26 proposals - \$37.3 million
Homeland security/defense:	6 proposals - \$9.3 million

- Defense Contract Coordination Center; \$10 million to develop a program to assist Michigan companies in obtaining federal contacts specifically for homeland security and defense. Procurement Technical Assistance Centers are currently in place for other government contracts.
- Core Technology Alliance \$1 million to implement a grant program for early drug discoveries.
- Capital Access Program; \$3.5 million to help small business ventures that might not have had the opportunity to build collateral and/or credit.

These are just a few of the programs that will help take Michigan into the 21st century. To learn more about the program and the winners, please go to <http://www.michigan.org/medc/ttc/21stCentury/>.

Communities for Equity v. MHSAA

On August 16, 2006, the 6th Circuit Court of Appeals reaffirmed an earlier ruling that the Michigan High School Athletic Association (MHSAA) discriminates against female high school athletes by scheduling only their sports in nontraditional and less advantageous seasons, in violation of the U.S. Constitution and Title IX.

According to the National Women's Law Center, the case began in 1998 when Communities for Equity sued MHSAA for scheduling six girls' sports—and no boys' sports—in nontraditional seasons. In 2001, the district court held that MHSAA's scheduling of girls' seasons violated Title IX, the United States Constitution, and Michigan state law. In 2004, the Sixth Circuit upheld the district court's decision on the constitutional claim, finding it unnecessary to reach the Title IX or state law issues. The following year, the Supreme Court asked the Sixth Circuit to reconsider the case, posing the technical question of whether the girls can sue under the Constitution in addition to Title IX.

The Michigan High School Athletic Association filed a petition for a rehearing or rehearing en banc in the U.S. Court of Appeals for the Sixth Circuit in its sports season litigation.

The Michigan Women's Commission has received testimony from the Communities for Equity about its organization and lawsuit. For more information about the lawsuit, please check out www.communitiesforequity.com and www.mhsaa.com.

CELEBRATION OF MICHIGAN WOMEN

On October 25, the Michigan Women's Hall of Fame will host its 23rd Annual Awards Dinner, at the Sheraton Detroit, Novi.

The contemporary inductees will be Mary Esther Daddazio, Nancy Hammond, Dr. Helen Hornbeck-Tanner, and Marge Piercy. The historic inductees will be Margery Feliksa, Martha Strickland Clark, Dr. Dora Stockman, and Viola Luizzo. Nancy Hammond was a former staff person with the Michigan Women's Commission in the 1970s, and we congratulate her and others for this recognition. For more information, contact the Michigan Women's Studies Association at (517) 484-1880 or by email at michiganwomen@sbcglobal.net.

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CALENDAR

October – Domestic Violence Awareness Month (www.ncadv.org) & Breast Cancer Awareness Month (www.cancer.org)

October 10, Tuesday – Last day to register to vote for Michigan's General Election (www.michigan.gov/sos)

October 25, Wednesday – The 2006 Michigan Women's Hall of Fame Awards Ceremony, Novi (www.michiganwomenshalloffame.org)

October 26, Thursday – Livonia, Burton Manor, Phoenix Mill Women's Museum "Spa" fundraising event, sampling spa and salon techniques including massage, waxing, beauty tips. 5 pm (<http://64.226.20.125/phoenixmillwomensmuseum>)

November 7, Tuesday – Michigan's General Election (www.michigan.gov/sos)

December 1, Friday – World AIDS Day (www.worldaidsday.org)

December 13, Wednesday – Michigan Women's Commission Meeting, Lansing (www.michigan.gov/mdcr)

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